FRENCH COURT CLERKS : UNCERTAINTIES IN TURNING THE JOB INTO A PROFESSION

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1. The Clerk's Office: the word and what it designates

The French word "greffe", meaning Clerk's Office, is believed to come from the Greek *graphein*, to write. If writing is referred to in designating the function, it is because justice was handed down orally for a long time. But from the 13th century on, this was found inadequate, especially with the changed modalities of giving evidence. In particular, it was difficult to prove the existence of a verdict: either witnesses (the "court records") or the judge who had passed the sentence had to be heard. This explains the French saying: "better writs than witnesses".

Originally then, court clerks were people who authenticated the acts of judges, and they still do. Authenticating means bearing witness, attesting to the reality, the existence of a fact, in this case the fact of the trial, its content, the people present at the hearings and perhaps even what was said during the oral procedures, as well as the existence of the final verdict. After which the minutes are entrusted to the court clerk to make sure that none of the judge's acts or verdicts disappear or are used for illegal ends. He is also in charge of delivering certified copies and appending writ of enforcement when necessary.

To conserve some trace of verdicts and of their content, the early court clerks noted the identity of the parties, the reason for the trial and its outcome, in a few lines, on registers filled in each day and for each hearing. They then kept those registers and made copies when necessary. But at that time court clerks already received documents pertaining to cases to be examined in their court district, and kept the case records in bags, whence the expression "it's in the bag" (the French say "the case is in the bag"), meaning a case is ready to be judged.

This aspect of their work, tied to writing and to the management of the flow of cases has constantly gained in volume since. The August 24 1790 act requires that judges motivate their decisions, and court clerks took charge of the rewriting job, later to become typing.

Over the centuries, no secretarial staff ever developed in any court district, with the exception of a few public prosecutors' offices. It was the clerk's office that took on the swelling flow of cases. Concretely, that meant that its agents receive the public in each court district, receive actions at law, record them and ventilate them to the appropriate department. They also treat some cases, authenticate hearings and finalise the lay out of decisions. They also issue some procedural documents such as summonses and notifications; they administer finances (deposits for legal fees, experts, etc.) and legal aid services. Last, they are in charge of conserving the original documents and archives, delivering copies and inserting writs of enforcement. Moreover, the clerk's offices are responsible for managing the material and human resources of courts, under the supervision or the authority of the senior court official. They also handle some administrative formalities in their own right: they manage guardianship accounts, issue citizenship certificates, affix the seals following a death, and so on. Clerks at public prosecutors' offices have no authentication function. They receive and handle cases, which may or may not be a large job, depending on the department for which they work.

Since 1965, these workers have general civil servant status. They are divided into three categories:

- chief clerks, category A, are administratively responsible for the clerks' offices, in charge of managing the physical and human resources of courts and of organizing the clerk's office;
- court clerks, category B, more specifically in charge of authenticating the judges' documents, of assisting the judges and actually of managing the circulation of the flow of cases and other administrative documents, under the authority of the chief clerks, except for the authentication of acts, which they do in their own right;
- agents in category C do not have court clerk status and are supposed to assist the latter in their administrative tasks.

As will be seen, this set-up is now completely irrelevant. The division of labour in courts was shattered under the pressure of the case load and the reasserted determination to use the clerk's office to supply back-up for courts and assistance to judges.

The number of clerk's office workers has risen drastically since civil servant status was obtained in 1965. There are now some 1,700 chief clerks (category A), 7,300 court clerks (category B) and 11,000 category C agents, representing a total of about 20,000 people. The figure was somewhere around 7,500 immediately prior to that measure. For the same period the number of judges rose from 3,900 to 6,800.

2. Evolution of the court clerk's status

The legal status of court clerks has changed enormously over the centuries.

In the 13th century the function was leased by the King, to whom the clerk paid rent, after which he received payment by each party for the documents he wrote. Later the function became patrimonial and was sold by the King in the form of hereditarily transmissible charges, like many public functions, especially judicature charges. During the French Revolution, in 1790, all charges were eliminated, but the clerk's charges were revived in 1816 (along with those of notaries, bailiffs and so on). However, the transferability of the charge was replaced by the simple right to suggest a successor, a right for which pay was due. However, while the chief clerks, as they were already called, retrieved their charge, their underlings remained functionaries, known as assistants to the clerk of the court, until 1936 when they became court clerks. These civil servants were at the disposal of incumbents of charges to *première instance* (first level) courts and courts of appeal, along with those clerks and employees who worked for the chief clerk privately.

This state of affairs persisted until 1958, at which date the French judiciary system was remapped. The reform eliminated 1,300 justices of the peace at the *canton*[1] level, created 458 courts at the *arrondissement*[2] level and transformed 359 *première instance* courts into *grande instance* civil courts. The clerk's offices attached to the justices of the peace and the courts underwent the same change-plus-reduction, and many clerks

[1] The smallest subdivision of the French territory after the municipality.
[2] The territorial subdivision just above the *canton*.

were ruined, particularly since the smaller offices, especially those working with justices of the peace, were extremely modest and were already suffering from the latter's reduced case load.
The Ministry of Justice undertook to save the clerk's offices – the only administrative support structure in courts – by giving them civil service status. This reform did not go through until 1965, however, because of the serious conflict between chief clerks, who owned their charge, and those of their workers who were already civil servants. The former refused state employee status and tried to get further attributions, including non-contentious procedures such as adoptions, changes of name, etc.. The latter viewed state employment as facilitating access to chief clerk positions, through the creation of a unified status. The conflict was arbitrated in favour of a state employee status that did not satisfy the simple court clerks, since the chief clerks formed a distinct category to which access became difficult.
This status, introduced and designed primarily by administration officials representing the corporation at the Ministry of Justice and by magistrates responsible for drafting the project, was based on the notion that the clerk's office simply did the court's secretarial work and should therefore be supervised by the head of the court. This was a subject of further discontent within the corporation.

3. Problems pertaining to the professional identity of court clerks

Court clerks, obsessed with the status issue, had never given any thought to the specificity of their function. When faced with judges and with the problem of task allotment among the different categories, they came up against the difficulty of defining their profession.
There was, indeed, great confusion, within clerk's offices, as to the roles of the various categories of workers, and of those classed B and C in particular, with heterogeneous functions within a same category. The division of labour in a clerk's office depends on the size of the court and the nature of the departments therein, as well as of the tasks assigned to the offices by the different codes of procedure.

a) Judges and court clerks

When the Federal Union of Judges met in Metz in 1967, it examined the future of the profession and the number of judges, given the increasing case load. It considered that if the magistracy was to remain a major branch of civil service it had to stay small. A way had to be found, then, to relieve judges of some of their duties. Court clerks, who had just achieved civil service status, would have done nicely, but they were not allowed to write up decisions. Their action could only be informal, then, taking a variety of forms (correcting written decisions, preparing hearings, etc.) and the extent of their aid was left to the assessment of the court clerks themselves.
At the same time, the chief clerks' status as defined in the 1965 act had given them managerial functions regarding the court's human and material resources, as well as vocational training missions, in addition to their usual authentication work.
These new assignments caused friction between the chief clerks and the judges heading courts, leading the Ministry of Justice to set up standing commissions in 1968. They produced an official instruction defining those functions for which orders from the head of a court are required and those which the latter only control *a posteriori*.
Furthermore, the magistracy refused to have chief clerks given judiciary competence based on ratione materiae patterned after the German *Rechtspfleger*, as demanded by the independent trade union of state-employed court clerks. All it achieved was the transfer of some administrative procedural competences from judges to head clerks.

b) Among clerk's office workers

The 1965 reform, we remember, had turned public prosecutor's office secretaries into court clerks. Now these clerks, presently officiating in public prosecutor's offices, have never had any opportunity to authenticate documents. They see themselves as simple secretaries, and are quite bitter. Secondly, those who work for the bench do extremely variable jobs depending on the court at which they are employed. The large courts have specialized departments, and divide tasks between court clerks and category C workers in ways which mirror the civil service categories approximately. Conversely, although small courts also have several departments (criminal justice, civil court, with distinctions within the latter depending on the types of procedure), they put a same person in charge of several departments, irrespective of his status. This is made possible by the code of judiciary organization, which allows category C agents to do authentication, theoretically reserved for the higher categories.
The professional identity of chief clerks is a bit clearer, inasmuch as their managerial function seems to define their role, although their tasks too vary with the size of the court. When a court is not large enough to employ chief clerks at managerial jobs on a full-time basis, they participate in jurisdictional work as well.
Clerk's offices also do work that could as well be performed by other administrations. Certificates of citizenship, for instance, could be delivered by town halls, and administration of legal fees could be handled by the treasury department. The professional identity of chief clerks is vague, then, be it with regard to their status or to their tasks, which are quite varied.
When the scale of public service jobs was reformed, leading to the Durafour agreements in 1990 and a new status for court clerks in 1992, the question of the redefinition of the court clerk function was raised, to no avail. As opposed to nurses and youth workers, category B court clerks did not succeed in proving that their job was sufficiently technical to put them in a higher category.

4. Union battles

The professional organizations covering this field have changed with the structures and functions of the profession itself.
The latter originally had its own trade union. But once clerks were diluted in the comprehensive public service categories, it found itself in a union extended to all categories of civil servants working for the Ministry of Justice. The independent union, founded in 1949 when it split from the *Force Ouvrière* (FO) union, suddenly had competitors. Other horizontal unions – the CGT, CFDT[3] and FO – caught up with it. They fought for a clarification of tasks and a better status, experiencing great difficulty in obtaining the former because of the power relations between judges and court clerks. This failure ultimately caused two further splits. In 1990, category B agents created the *Syndicat des greffiers de France*, after which category C agents formed a union of their own in 1995. The change in trade union structure was caused, then, by the inability of the non-specialized unions to find a solution to the persistent malaise between the various categories of clerk's office workers. The

[3] *Confédération Générale du Travail* and *Confédération Française du Travail.*

corporatist unions changed the scene for the central administration, which was no longer able to play categories against each other, leaving it up to the non-specialized unions to play referee between the contradictory interests of the different categories they represented.

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The last episode in the saga of court clerks was the establishment, in 2002-2003, of a new status for all three categories of clerk's office workers, following decisive union action. Category B clerks in particular have now won recognition as "procedural technicians", giving them access to the intermediary category, the rejection of which demand in 1990 had led to the creation of the *Syndicat des greffiers de France*. Concomitantly, a corporation of administrative secretaries (category B) has been created within the clerk's offices, to take charge of the administrative tasks. We are now witnessing a trend, within the clerk's offices themselves, toward differentiation of administrative and court type functions, each employing all three categories of state workers. In ten years the new corporatist unions seem to have achieved what nearly forty years of action by the large, non-specialized unions had been unable to do.

It remains to be seen whether these statutory modifications will translate into changes in practices, and in the division of labour within courts.

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